Robert J. Geary
P.O. BOX 1506
Clearlake Oaks, CA 95423
707-295-2981

November 22, 2011

Daisy West, Chief Tribal Government Services
1849 C Street, NW., MS-4513-MIB
Washington, DC 20240

This new correspondence from Senator Feinstein. de 02/07/2012

Dear Ms. West:

I am a tribal member of the Elem Indian Colony. My rights under the Constitution and Bylaws of the Elem Indian Colony, Article VII, the Civil Rights Acts of 1968 (82 Stat.77) and the Indian Civil Rights Act (ICRA) 25 U.S.C. § 1302 (1988) have been violated.

I have attached a letter sent to Troy Burdick, Superintendent, Bureau of Indian Affairs, regarding two events that have taken place in which my rights have been violated.

I have pleaded with the Bureau of Indian Affairs, Pacific Region, in the past and I have not received any assistance whatsoever. There have been two disenrollments in which both procedures were executed in the exact same manner. However, the Bureau of Indian Affairs has recognized one disenrollment as being legal and the other illegal. Due to this inconsistency, 25 tribal members of the Elem Indian Colony have been unjustly disenrolled and are being threatened eviction from their homes.

Our tribal constitution is constantly being violated by the current Executive Council and the Bureau of Indian Affairs often ignores our pleas for help or when they are addressed, their decisions are often conflicting.

We are unable to hire a lawyer to help us, as all of our tribal funds are in the control of the Executive Council. I am deeply concerned for the 25 disenrolled tribal members and the security of my family's future tribal membership. If you carefully read through the attached letter and the supporting documentation, you will understand my concerns. We are seeking justice and I hope you can help us or point us in the right direction.

Sincerely,

Robert J. Geary
Elem Indian Colony
Tribal Member, Roll#91-069

RECEIVED
NOV 29 2011
Bureau of Indian Affairs
Office of Indian Services

Robert J. Geary
P.O. BOX 1506
Clearlake Oaks, CA 95423
707-295-2981

November 13, 2011

Troy Burdick
Superintendent
Bureau of Indian Affairs
650 Capital Mall, Suite 8-500
Sacramento, CA 95814

Dear Mr. Burdick:

I am a tribal member of the Elem Indian Colony. My rights under the Constitution and Bylaws of the Elem Indian Colony, Article VII, the Civil Rights Acts of 1968 (82 Stat.77) and the Indian Civil Rights Act (ICRA) 25 U.S.C. § 1302 (1988) have been violated.

On November 5, 2011 at 12:15pm, I arrived at the Best Western El Grande Inn in Clearlake, California for a scheduled tribal quarterly meeting (See Attachment A, "Meeting Notice"). When I entered the meeting room, Nathan Brown II, Elem Indian Colony, Tribal Chairman, who was accompanied by security guard, Perry Tripp, of the Two Feathers Security Agency, asked me and another tribal member, Adrian John to step outside. Chairman Brown then stated that we were not allowed to attend this meeting. When we asked why, his response was that we were sanctioned. When I requested information regarding the sanction, he then stated that the issue was going to be brought up at this meeting and we would receive it by mail. I stated that if it had not been voted on as of yet, then I had a right to attend this meeting and to vote on the matter. He continued to deny us our rights to attend and said we had to leave the premises. Many other tribal members were also denied attendance and were asked to leave.

This is the second occasion in which my, as well as other tribal member's civil rights have been violated. On November 10, 2007, a tribal quarterly meeting was held in which 25 tribal members were denied the right to enter and to vote. When an issue regarding membership disenrollment was presented, I was asked to leave the meeting because I was related to members being reviewed for dissenrolled. A vote was then taken by the remaining tribal members with the outcome of 41 for and 33 against the disenrollment. As a result, those 25 Tribal members, who were denied the right to enter the meeting and vote on this issue, were dissenrolled by only 8 votes. If they, as well as I, were given our civil liberties and were allowed to attend the meeting and to vote on this matter, the disenrollment would have not passed (See Attachment B, January 18, 2007 "Letter from Chairman Brown to Brenda Geary", Attachment C, April 30, 2007 "Letter from the Enrollment Committee to Brenda Geary", Attachment D, November 10, 2007 "Meeting Minutes", Attachment E, "List of Disenrolled Members", Attachment F, and November 26, 2007 "Letter from Chairman Brown to Pamela Hernandez")

Letters were written to your office regarding the civil rights violations (See Attachment G, February 17, 2007 "Letter from Robert Geary to Troy Burdick"). You later responded to other concerned tribal members on matter, on August 8, 2007 (See Attachments H, August 8, 2007 "Letter from Troy Burdick to Geary Thomas" and Attachment I, August 8, 2007 "Letter from Troy Burdick to Richard Steward" You state the following:

"Although we are concerned about the recent actions taken by the Executive Committee for the Elem Indian Colony, we are not in a position to intervene in the internal tribal affairs due to the United States Supreme Court Decisions

In Santa Clara Pueblo v. Martinez, 436 U.S. 49. 72. N. 32 (978), which determined that tribes have a right to determine their own membership I. exercising the rights of sovereignty and self –determination. In following the Courts decisions, the bureau of Indian Affairs has established policy of non- involvement in internal tribal issues. See Wheeler v. United States Dept. of the Interior, 811 F. 2nd 549 (10 Cir 1987)

In conclusion, the Bureau recommends that the member work with the General Council and its elected officials to resolve these members issues"

However a letter from your regional Director, Amy Dutschke's letter Dated May 20, 2011 (See Attachment J, May 20, 2011 "Letter from Amy Dutschke to Barbara Karshmer") regarding the March 21, 2010 disenrollment of Tribal members who had dual membership with the Elem Indian Colony and with the DELEMA tribe, Ms. Dutschke states:

"There is no Enrollment Ordinance or other document specifying how the Tribe may proceed to disenroll individual, the Tribes constitution the document that governs enrollment actions…" …" Under the Article III of the Tribes Constitution the General Council is defined to consist of all qualified voters of the Tribe, who are defined as members of the Tribe that are 18 years of age or older. Because the DILEMA member had not been disenrolled from the Tribe, they remained members eligible to vote in accordance with Article III of the Tribe's Constitution. Consistent with the Tribe's Constitution, the DILEMA members continued to be included as members of the Tribe who were eligible to vote In a General Council meeting and would have to be counted for Purposes of determining whether 45 % of qualified voter constituted a quorum. As the Superintendent observed, the BIA has the authority and the responsibility to decline to recognize the results of tribal actions when those results are tainted by a violation of the ICRA."

The disenrollment process executed on November 10, 2007 and March 21, 2010 was exactly the same. However, when the issue was brought before the BIA, the responses were conflicting. The November 10, 2007 disenrollment was upheld by you and your office, but the March 21, 2010 disenrollment was declined by Ms. Dutschke.

In addition, when Chairman Johnson, I and other tribal members met with you on November 22, 2010 to discuss an appeal, I also inquired about the difference between the two disenrollments. You stated that the November 10, 2007 disenrollment was recognized by BIA because a quorum was established without the 25 tribal members. Where was the assistance to protect these individual's civil rights?

If the 25 tribal members who were dissenrolled on November 10, 2007 had the same decision from your office as the March 21, 2010 disenrollment, they would still have their membership today. I believe that their and my rights under both the Constitution and Bylaws of the Elem Indian Colony, Article VII, the Civil Rights Acts of 1968 (82 Stat.77) and the Indian Civil Rights Act (ICRA) 25 U.S.C. § 1302 (1988), have been violated due to the inconsistency of your office.

What is the reasoning why both disenrollment issues did not have the same outcome when the process was executed in exact the same manner? There also may be a conflict of interest issue involved, as Tina Fourkiller, DELEMA tribal member is an employee within the BIA office and often knew the outcome of your and Ms. Dutschke's decisions before they were official.

If the March 21, 2010 disenrollment was protected under our Constitution and Bylaws of the Elem Indian Colony, Article VII, the Civil Rights Acts of 1968 (82 Stat.77) and the Indian Civil Rights Act (ICRA) 25 U.S.C. § 1302 (1988), then the November 10, 2007 disenrolled tribal members should have also had the protection from your agency (See Attachment J, May 20, 2011 "Amy Dutschke letter to Barbara Karshmer", Page 2, Relevant Federal Law, Items 2 & 3). ***"The Secretary of the Interior is charged not only with the duty to protect the rights of the tribe, but also the rights of the individual members. And the duty to protect these rights is the same whether the infringement is by non-members or by members of the tribe."***

I am requesting that your office look into this matter further concerning the denial of my rights to attend and to vote at the November 5, 2011 general council meeting and to clarify why the decision from your office regarding both disenrollments are in conflict. We hope this investigation will reveal that the November 10, 2007 disenrollment was illegal and that the 25 tribal members can reestablish their tribal membership.

I am also requesting a copy of the sign in sheet for our November 10, 2007 general council meeting.

Sincerely,

Robert Geary

Robert J. Geary
Elem Indian Colony
Tribal Member, Roll#91-069

See Attached Distribution List

Distribution List

Amy Dutschke, Acting Regional Director
Pacific Region
Bureau of Indian Affairs
2800 Cottage Way
Sacramento, CA 95825

Larry Echo Hawk
Indian Affairs
MS-4141-MIB
1849 C Street, N.W.
Washington D.C. 20240

Chief Administrative Judge
Interior Board of Indian Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

Bureau of Indian Affairs
Chief, Tribal Government Services
1849 C Street, NW., MS-4513-MIB
Washington, DC 20240

Office of Solicitor,
Pacific Southwest Region
Attention: Karen Koch, Assistant
Regional Solicitor
2800 Cottage Way, Room E-1712
Sacramento, CA 95825-1890

Congressman Mike Thompson
Napa District Office
1040 Main Street, Suite 101
Napa, CA 94559

Senator Barbara Boxer
70 Washington Street, Suite 203
Oakland, CA 94607

Senator Diane Feinstein
One Post Street, Suite 2450
San Francisco, CA 94104

Kimberly Teehee, Senior Policy Advisor for Native American Affairs
White House Domestic Policy Council
1324 Longworth House Office
Washington D.C. 20515

Senator Daniel Akaka, Chairman
Senate Committee on Indian Affairs
141 Hart Senate Office Building
Washington, D.C. 20510

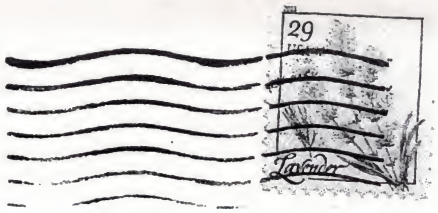
Senator Dan Inouye
Senate Committee on Indian Affairs
722 Hart Building
Washington, D.C. 20510-1102

President Barack Obama
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

ATTACHMENT A

em Indian Colony
st Office Box 757
earlake Oaks, CA 95423

OAKLAND CA
PM
19 OCT
2011



Robert Geary
Post Office Box 1506
Clearlake Oaks, CA 95423

Front

October 18, 2011

NOTICE!!!!

Quarterly Meeting of the Elem Indian Colony

Date: November 5, 2011

Time: 12:00 – 4:00 PM

Place: Best Western El Grande Inn
15155 Lakeshore Drive, Clearlake, CA
95422

? Call 707.295.6131

Back

ATTACHMENT B

ELEM INDIAN COLONY
ELEM POMO TRIBE
P. O. Box 989 • Clearlake Oaks, CA 95423
707-998-2992 • Fax 707-998-2993 • www.elemnation.org

January 18, 2007

Brenda Geary
P.O. Box 933
Clearlake Oaks, CA 95423

As you may know, under the Elem Indian Colony Constitution & By-laws for membership Section 2, indicates one of the criteria's for membership, is you must be a descendant of a person on the basic membership roll. Unfortunately, we have received historical documents that your descendents are from Lower Lake, which is now called the Koi Nation and therefore you do not meet the requirements for membership of the Elem Indian Colony. If we had known this information before hand, it would have dealt with this issue sooner.

We will continue providing you with tribal administrative services, such as Employment Assistance, Re-location Assistance, Adult Education and ICWA. In addition, you will receive non-gaming revenue funds for the last quarter ending December 30, 2006. This payment will be given out in early February 2007.

However, until further notice your **voting rights** will be suspended **immediately** and you have the right to appeal this decision in writing and **provide documents proving descendancy** to Elem within ninety (90) days from the date of this letter. You must bring your appeal and appropriate documents before the General Council at the end of the ninety (90) days.

In the event that you do not appeal within the ninety (90) day limit and you hold a Lot Assignment, it will be determined by the Tribe as to the date you must vacate your lot assignment and property from Elem. Again, we will make every effort to assist you with becoming a member of your rightful Tribe. See attached document of your family descendant and location of Tribe. Page 312 Fathers Mother & Grandmother. Also letter regarding Father

Respectfully,

Raymond Brown Sr.
Tribal Chairman

c: Elem Enrollment Committee

ATTACHMENT C

ELEM INDIAN COLONY
ELEM POMO TRIBE
P. O. Box 989 • Clearlake Oaks, CA 95423
707-998-2992 • Fax 707-998-2993 • www.elemnation.org

April 30, 2007

Brenda Geary
P.O. Box 933
Clearlake Oaks, CA 95423

Re: Appeal Process Decision by Enrollment Committee

Dear Brenda:

As of April 18th 2007, the Appeal time of ninety (90) days for you have officially ended. In the meantime we have looked at all the documents that some of you have presented to us to connect yourself as descendents of the Elem Pomo Tribe. These documents do not prove your connection to Elem and also false information was given when Elem's Basic Membership Roll was established in 1971. John Kelsey, Effie Kelsey, Albert Thomas, Delbert Thomas Sr., Cleta Kelsey and Thomas E. Morinda should have never been put on the Basic Roll. Therefore, you should never even have a parent from the Basic Roll as stated in the Constitution.

The information on John Kelsey, Little Thomas and his wife and their children, proves that they were from Lower Lake. (SEE ATTACHED) Herbert Geary's history is connected to these two individuals mentioned above

Unfortunately, we will now be unable to serve you in any capacity of Tribal services under the Elem Indian Colony's Constitution & Bylaws. You will no longer be eligible for any benefits of the Tribe including no voting rights on issues pertaining to Elem Indian Colony of Pomo Indians.

In addition, based upon our land assignment ordinances, if you have land assignment, it will be cancelled. If you live on an assignment, you have sixty (60) days to vacate. If you have large personal property, you will have one hundred eighty (180) days to remove this property from the lot. These tribal demands will take effect as of the date of this letter.

This is your final notice to comply and adhere to laws of Elem Indian Colony and as this is not a General Council issue, as you do not meet the basic enrollment requirements or criteria for membership under the tribe's Constitution & By-laws.

In the event you do not comply with this notice, legal action will be ordered for your violations against a sovereign nation in a timely manner. It is our hope, that you will honor our decisions and not create any unnecessary legal action to be ordered on this issue and up hold your honor and pride to move on to bigger and better endeavors in your future.

Sincerely,

Karen John

Karen John, Chairperson
Elem Enrollment Committee

c: Elem General Council
Elem Executive Committee
BIA/Central California Agency, Sacramento, CA
Rod Mitchell, Sheriff-Lake County

ATTACHMENT D

Elem Indian Colony
General Council Meeting Minutes

November 10, 2007

I. CALL TO ORDER: Chairman, Raymond Brown, Sr., called the meeting to order at 12:55 p.m.

II. ROLL CALL: Secretary/Treasurer, Sarah Garcia, took roll. There were seventy-two (72) members present, constituting a quorum to do business. Two (2) members came late, brining the total number of members present to seventy-four (74).

III. APPROVAL OF AGENDA: Lena Smith made a motion to approve the agenda as is. Gerri Johnson seconded the motion. Motion carried. 34, 12, 0.

Introduction of new employees: Chairman Raymond Brown, Sr., introduced Krystal Peregrina as the new Executive Assistant and announced Stephen Waltz as Elem Indian Colony's new Office Administrator.

IV. READING OF PRIOR MEETING MINUTES: Sarah Garcia read the meeting minutes from August 4, 2007, General Council Meeting. Wah-lia Pearce maked a motion to approve the minutes w/corrections, seconded by Steve Brown. 38, 0, 3.

Paul Steward makes a motion to keep a quorum even though people were leaving. Leora John seconded the motion. 50, 0, 1.

V. FINANCIAL REPORTS: The Tribal Treasurer, Sarah Garcia, reported that the financial reports were very extensive and they were on the table for tribal members to pick up a copy.

VI. DISSOLUTION OF DISENROLLED MEMBERS: The dissolution of the disenrolled members caused a lengthy discussion. After debate over the disenrollment it was decided that the ballots would be signed and turned in for counting. Piyaco Brown, Clifford Mota, and Delila Smith volunteered to count the ballots. The motion for the dissolution of the 25 disenrolled members was passed. 41, 33, 0.

Chairman Raymond Brown, Sr., announced Dan Kerrigan is the investor for the Tribe from Pacific Tribal Partners. They are in the midst of helping with the environmental issues and as soon as the environmental issues are taken care of the casino should be breaking ground in June or July of 2008. They are also looking into purchasing the adjacent open land in Clearlake Oaks. The Tribe is also in litigation to acquire the mine property against Mr. Bradley for trying to sell the property while under lien. The mine property is about 300+ acres.

VII. GAMING CONSULTANT: This topic also caused a lengthy discussion. The question was: How is the Tribe going to pay for a gaming consultant? Rozan Brown made a motion to hire Gaming Consultant, Kani Neves, and pay the 12 month contract of $4,500.00 a month with the $10,000.00 given to the Tribe by Dan Kerrigan. Agustin Garcia seconded the motion. 36, 3, 1.

VIII. HIRING AN ATTORNEY: Thomas Brown makes a motion to obtain Karshmer & Associates for gaming issues. Rozan seconded the motion. 43, 0, 0.

Secretary/Treasurer asked General Council if they are okay with getting a budget by mail or at the next meeting on how to spend the $10,000.00. General Council was in agreement.

IX. ENROLLMENT ISSUE: Richard Steward made a motion to close enrollment to adults from other tribes for five (5) years. Leon Garcia seconded the motion. 33, 13, 1.

X. LOT #20: Elton Wright, Sr., made a motion to pass Lot #20 to Laurie Smith. Leora John seconded the motion. 47, 4, 1.

XI. MICHAELA JOHN: Michaela John would like some of her money back if she is entitled to any and she would also like her voting rights back. Richard Steward made a motion in support of Michaela's request to give her her voting rights back and leave it up to the executive committee as to whether she gets any money back. Leora John seconded the motion. 43, 8, 2.

XII. TERMINATION OF RAYMOND BROWN, JR.,: Leon Garcia made a motion to support the Executive Committee and terminate Raymond Brown, Sr. Agustin Garcia seconded the motion. 37, 1, 5.

XIII. LOT #29: Leora John made a motion to evict the members illegally occupying Darrell Thomas' home Lot #29. Leon Garcia seconded the motion. 33, 8, 3.

XIV. LOT #3: Nathan Brown, Jr., made a motion to evict the non-members out of Lot #3. Agustin Garcia seconded the motion. 40, 12, 0.

XV. BIOFUEL DEAL WITH CHINA: Elvina Brown made a motion to table this topic. Samuel Wright, Sr., seconded the motion. 23, 0, 0.

XVI. WATER ISSUES: Thomas Brown made a motion to help with water issues. Marvin Brown seconded the motion. 37, 0, 1.

XVII. ADJOURNMENT: Without further business to be discussed, Wah-lia Pearce made a motion to adjourn. Rozan seconded the motion. Motion carried by unanimous decision. Meeting adjourned at 3:10 p.m.

CERTIFICATION

These minutes have been recorded and transcribed by Krystal Peregrina, Executive Assistant for the Elem Indian Colony.

Krystal Peregrina
Executive Assistant

10/20/07
Date

ATTACHMENT E

November 10, 2007

Disenrolled Tribal Members

1. Pamela Hernandez
2. Francisco Hernandez
3. Rogelio Hernandez
4. Andreas Hernandez
5. Brenda Geary
6. Sonya Montes
7. Nora Montes
8. Rafeal Montes
9. Alberto Montes
10. Loretta Kelsey
11. Phyllis Wright
12. Lamar Peters
13. David Burrows
14. Carla Burrows
15. Frank Burrows Jr.
16. Anita Burrows
17. Delbert Thomas Sr.
18. Delbert Thomas Jr.
19. Darryl Thomas
20. Geary Thomas
21. Lyle Thomas
22. Sandra Thomas
23. Rhoda Thomas
24. Kristen Thomas
25. Tara Thomas

ATTACHMENT F

ELEM INDIAN COLONY
ELEM POMO TRIBE
P. O. Box 989 • Clearlake Oaks, CA 95423
707-998-2992 • Fax 707-998-2993 • www.elemnation.org

November 26, 2007

Pamela Geary
P.O. Box 1364
Clearlake , CA 95422

Re: Disenrollment

Dear Pamela:

I was directed to let you the unpleasant decision that the General Council made on November 10, 2007 at the duly called meeting at which a quorum was present. By secret ballot on whether the General Council wanted to agree with Executive Committee's decision to disenroll you or not. The vote was forty-one (41) to disenroll and thirty-three (33) not to. Therefore, as of the date of the General Council meeting, you are no longer a member of the Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria.

There will be other legal matters to be taken care of to remove people who have been voted to be disenrolled who occupy property on Elem. We will follow the law on this matter. So please respect the tribe's decision.

Respectfully,

Raymond Brown Sr.
Tribal Chairman

c: Elem General Council
Elem Executive Committee
BIA Central California Agency
Rodney Mitchell, Lake County Sheriff

ATTACHMENT G

February 17,2007

To: Troy Burdick, Superintendent Bureau of Indian Affairs
Central California Agency
From: Robert J. Geary, Tribal Member of El-Em Indian Colony
RE: Membership Suspension of 25 members

In response to your request at our meeting on February 14, 2007, I write this letter to expose disconcerting actions taken by the Executive Committee of the Elem Colony of the Pomo Indians in Clear Lake Oaks, California.

On January 9, 2007, Mr. Raymond Brown, Sr. and the Executive Committee (collectively the "Executive Committee") executed and delivered a letter (attached hereto as Exhibit A) addressed to 25 tribal members, namely descendants of the Thomas, Geary and Kelsey lineages (collectively the "Threatened Families"), stating threats to immediately suspend voting rights and demand genealogical documentation in order to preserve the enrollment status of the Threatened Families. This letter explicitly violates the enrollment ordinance set forth in Article II, Section 1 of the Elem Tribal Constitution and Bylaws (attached hereto as Exhibit B, the "Tribal Constitution") duly adopted by the General Council on January 29, 1972. Such actions expressed in the Demand Letter would require an amendment to the Tribal Constitution pursuant to Article IX of the Tribal Constitution.

On January 18, 2007 the Executive Committee executed and delivered an additional letter to the Threatened Families (attached hereto as Exhibit C) giving 90 day notice to present genealogical documentation to the Executive Council, stating "failure to do so will result in immediate loss of membership and removal from the reservation."

Additionally, the Executive Committee canceled a general council meeting on February 3, 2007 that would enable the Threatened Families to speak on their own behalf. On February 11, 2007 the Executive Committee held a meeting without proper notice pursuant to Article IV, Section 2 of the Tribal Constitution. When a few of the members of the Threatened Families arrived, they were ordered to leave.

Further, since our meeting on February 14, 2007, those Tribal members that attended the meeting at your office have been threatened to have their " non-gaming monies" suspended, and the Executive Committee is negotiating membership transfer to Lower Lake without permission or consultation of the affected members or on the advisement of the General Council. The civil rights of the "Threatened Families" are being violated and

there has been no due process that has been to given to these families promised by El-Em's Constitution and Bylaws.

The unconstitutional acts of the Executive Committee are severely threatening the livelihoods of several Tribal members of the Elem Colony. If the threats of Executive Committee are executed, members of the Threatened Families, many of whom are at the forefront of preserving and maintaining the traditions and integrity of the Elem Colony of Pomo Indians, will be unlawfully displaced, further impoverished, and denied of their innate rights as Pomo Indians of the Elem Colony. We humbly request that your agency, as an overseer of tribal relations, immediately demand that the Executive Committee cease and desist from their threats toward the Threatened Families, and take whatever actions necessary to preserve our constitutional rights and to assure that our leaders follow the Constitution and Bylaws that are recognized by our tribe and your agency.

I would greatly appreciate a response from your office on this matter as soon as possible.

Thank you for your time.

Exhibit

A

ELEM INDIAN COLONY
ELEM POMO TRIBE
P. O. Box 989 • Clearlake Oaks, CA 95423
707-998-2992 • Fax 707-998-2993 • www.elemnation.org

January 9, 2007

To: All Tribal Voting Membership

Fr: Raymond Brown Sr., Tribal Chairman RB Sr.

Subject: Voting Membership Suspension Non-Descendants

Unfortunately, we have finally reviewed historical records that have been brought to the Executive Committee and Enrollment Committee's attention on those Tribal Members who are not descendants of our Tribe.

We have served these Tribal Members and many of them for years not knowing they were not descendants of our Tribe. Also, not to forget by way of marriages they have become our uncles, aunties, and cousins.

Our Constitution & Bylaws clearly states in order to become a member of Elem Indian Colony you must have a descendant of Elem Indian Colony Pomo Tribe. After reviewing, the minutes and documents it appears the descendant of Elem Tribal Members were not aware of the status of some of these Tribal Members prior to the Constitution & Bylaws adoption.

I know and the Committee's realize this is a very sensitive issue and we have looked at every avenue to determine on what actions should be taken to clear up this issue. We realize a lot of our Tribal Members will be dissatisfied and hurt that we have not addressed this issue before.

Especially, those Tribal Members who are going to be affected by our decisions and I want to give every Tribal Member an opportunity to provide us information or your thoughts and ideas on how we deal with this issue.

The families to be affected would be three (3) families 25 members who represent the following they are the Thomas, Geary's , and Kelsey's.

However, until we make some sort of decision it is my duty and the duties of the Committees to at least suspend the voting rights of the non-descendants until a final decision is made by the General Council on this vital issue.

In our efforts to deal with this issue we will be making contact with the Lower Lake Tribe called the KOI Nation were these members descendants actual originate from in hopes we could just transfer their membership to their rightful Tribe.

In addition, we will continue to serve them as Tribal Members of Elem Indian Colony until this matter is cleared up and we will continue to provide them services at least until they have made contact or connection with their rightful Tribe.

Please bear with us all as we hope this decision will help those members connect with their original people and descendants to carry on their traditions for the future of their children.

As we as relatives will be there for them to help in this transition to their original homeland in Lower Lake the KOI Nation Tribe.

If you have any questions or need further clarification, please contact me at the above phone numbers.

May the Great Spirit Be With Us All

Date: 1/13/07
To: Raymond Brown, Sr., Chairman and the Executive Committee
From: The Thomas, Geary and Kelsey families
CC: All Tribal Members and BIA
Subject: Violation of our Constitution and Bylaws

This letter is in response to the letter we received from you dated January 9, 2007 that states our voting rights have been suspended and that we are not descendants of this tribe. You state that you have reviewed historical records yet have not provided any of these records for proof. We demand to see these "historical records" that are in your possession immediately. On the contrary, we have historical documents that prove we are direct lineal descendants of this tribe and not "only by way of marriage" as you state in your letter. We will provide this proof to you or any other tribal member who wishes to view them. We do not recognize you decision, as your actions clearly violate the Elem Tribal Constitution and Bylaws, and it was all decided without a vote of the General Council. Furthermore, we have not, and do not give permission for you or anyone else to enroll or "transfer our membership" to the Koi Nation of Lower Lake, as we are rightful members of the Elem Indian Colony.

Exhibit

B

BASIC MEMBERSHIP ROLL

EL-EM BAND OF POMO INDIANS

Dewey Barnes

Calvin Brown

Houghton Brown

Jim Brown, Jr.

Herbert Geary

Cleta Jane Kelsey Burroughs

Effie Kelsey

John Kelsey

Irvin Morinda

Tom Morinda

Thomas Barnum Morinda

Priscilla Brown Smith

Albert Thomas

Delbert Thomas

EL-EM INDIAN COLONY
SULPHUR BANK RANCHERIA
CLEARLAKE OAKS, CALIFORNIA

ORDINANCE

An Ordinance to establish requirements and procedures governing the enrollment of members.

WHEREAS, it is the desire of the General Council of the El-Em Band of Pomo Indians to establish membership requirements and to prepare and maintain a current membership roll.

NOW, THEREFORE, BE IT ORDAINED, that the General Council of the El-Em Band of Pomo Indians does hereby adopt the following procedures to be effective the date this ordinance is approved.

Section 1 - The membership of the El-Em Band of Pomo Indians shall consist of:

(a) Those persons listed on the attached basic membership roll, which shall include previously adopted members.

(b) Descendants of persons on the basic membership roll, provided such descendants possess at least 1/8 degree Indian blood.

(c) Persons who otherwise meet the requirements for membership shall be ineligible for membership if they:

(1) appear on a membership roll of another tribe or band;

(2) have received an allotment or formal assignment of land with another tribe or band;

(3) appear on a distribution plan of another tribe or band, prepared pursuant to the Amended Rancheria Act.

(4) have relinquished in writing their membership in the El-Em Band of Pomo Indians.

Section 2. Each person desiring membership with the El-Em Band should submit a written enrollment application for consideration by the General Council. Applications may be filed on behalf of minors, other persons in need of assistance, or persons who are incarcerated, members of the armed forces, or living away from the El-Em Indian Colony by a parent, guardian, or other person authorized by the General Council.

Section 3. Persons approved as members by the General Council shall have their names placed on the membership roll. Persons not approved for enrollment shall be notified in writing of the reasons for disapproval, and informed of their right to appeal to the Bureau of Indian Affairs, Sacramento, California, within 30 days following receipt of the rejection notice.

EL-EM INDIAN COLONY
ENROLLMENT ORDINANCE

Section 4 - A roll will be prepared with a certification as to its correctness by the General Council. The General Council shall have authority to revise the membership roll by (a) striking the names of deceased persons upon receipt of documentary evidence of death, (b) adding the names of persons who are accepted as new members and, (c) making such corrections in the membership rolls as are necessary.

Section 5 - The current membership roll may be used for all purposes, except that when used for the distribution of tribal assets, it shall be approved by the Secretary of the Interior or his authorized representative.

Section 6 - The General Council shall have the power to promulgate further ordinances dealing with membership, provided that no ordinance dealing with adoption of new members shall be promulgated unless the resources of the band make such adoptions feasible, and provided further that no such ordinance shall abridge the personal or property rights of those who are already members.

BE IT FURTHER RESOLVED, that the Membership Ordinance enacted by the General Council on November 11, 1970, is hereby rescinded.

C E R T I F I C A T I O N

We, the undersigned, hereby certify that the foregoing ordinance was enacted by the members of the General Council at a duly called general meeting on January 29 1972, by a vote of 11 for and 2 against, and that this ordinance has not been rescinded or amended in any manner.

Raymond Brown
Chairman

Geraldine Charbonneau
Secretary-Treasurer

APPROVED:
/s/ Wesley L. Barker
ANC Area Director
Date: FEB

CONSTITUTION AND BYLAWS
FOR THE
ELEM INDIAN COLONY
of Pomo Indians
CLEARLAKE OAKS, CALIFORNIA

PREAMBLE

We, the Elem Indian Colony of Pomo Indians, to secure greater autonomy, and to promote our common welfare, do hereby adopt the following constitution and bylaws for the Elem Indian Colony of Pomo Indians of Clearlake Oaks, California

ARTICLE I - TERRITORY

The jurisdiction of the Elem Indian Colony of Pomo Indians shall extend to the territory within the present confines of the Elem Indian Colony and to such other lands as may hereafter be added thereto.

ARTICLE II - MEMBERSHIP

The membership of the Elem Indian Colony of Pomo Indians shall consist of:

Section 1. Persons listed on the basic membership roll established pursuant to the enrollment ordinance adopted by the general council on January 29, 1972.

Section 2. Descendants of persons on the basic membership roll, provided such descendants possess at least 1/8 degree Indian blood, and have at least one parent who is an enrolled member of the colony.

Section 3. Persons who otherwise meet the requirements for membership as established by the above mentioned enrollment ordinance shall be ineligible for membership if they:

(a) are enrolled as members of another tribe or band;

(b) have received an allotment or formal assignment of land with another tribe or band;

(c) appear on a distribution plan of another tribe or band, prepared pursuant to the Amended Rancheria Act.

(d) have relinquished, in writing, their membership in the Elem Indian Colony of Pomo Indians.

Section 4. The council shall have power to prescribe rules and regulations, subject to the approval of the Secretary of the Interior, covering future membership including adoption and loss of membership.

ARTICLE III - GOVERNING BODY

Section 1. The governing body of the Elem Indian Colony of Pomo Indians shall be the general council, which shall be composed of all qualified voters of the band.

Section 2. All members of the Elem Indian Colony of Pomo Indians who are 18 years of age or older are qualified voters.

Section 3. The general council shall elect from its members by secret ballot an executive committee consisting of a chairman, vice-chairman, secretary-treasurer, and two committee members, who shall hold office for two years, or until their successors are duly elected, as well as such other committees as may be deemed necessary. Duties of the two committee members will be as assigned by the general council and the chairman.

ARTICLE IV - MEETINGS

Section 1. The general council shall regularly convene at times and places as are prescribed by the executive committee.

Section 2. The executive committee shall call special meetings promptly upon receipt of petitions signed by at least thirty percent (30%) of the qualified voters requesting such meetings. ~~A majority~~ forty-five percent (45%) of the qualified voters of the band constitutes a quorum at meetings of the general council. Notices of all general council meetings shall be given in writing at least fifteen (15) days in advance of the meetings.

Section 3. Special meetings of the executive committee may be called by the chairman or the secretary-treasurer when deemed necessary. Three members of the executive committee shall constitute a quorum for the conduct of its business.

ARTICLE V - ELECTIONS

Section 1. First Election: Within 60 days following the effective date of this constitution and bylaws, the chairman of the general council shall call and hold a meeting of the general council for the purpose of electing the following officers who shall constitute the executive committee: chairman, vice-chairman, secretary-treasurer, and two committee members.

Section 2. Regular Elections: Beginning in 1974, the election of officers shall be conducted during November of each even numbered year and all officers shall be elected for two (2) year terms, or until their successors are duly elected and installed.

Section 3. Nominations of candidates shall occur at the November meeting of the general council as provided in Section 2, Article V. Nominations shall be from the floor. Any member, who is at least 18 years of age or older, may be a candidate for office.

ARTICLE VI - VACANCIES, REMOVAL AND RECALL

Section 1. Vacancies. If any elective official shall die, resign, or shall be found guilty while in office of a felony in any State, or Federal court, the executive committee shall declare the position vacant and call a special election to fill such vacancy. The candidate receiving the highest number of votes shall be elected and shall serve out the unexpired term.

Section 2. Recall. Upon receipt by the executive committee of a valid petition, signed by at least thirty percent (30%) of the qualified voters calling for the recall of an elected officer, the executive committee shall call and conduct within thirty (30) days a recall election. A majority of those who participate in such election must favor recall in order for it to become effective, provided those who vote constitute at least fifty-one percent (51%) of the qualified voters.

Should the recall be successful, the vacancy shall be filled as provided in Section 1 of this article. Further details needed to carry out the intent of this article may be set forth in the band's election ordinance.

ARTICLE VII - POWERS OF THE GOVERNING BODY

Section 1. The general council of the Elem Indian Colony of Pomo shall exercise the following powers, subject to any limitations imposed by the statutes and Constitution of the United States:

(a) To negotiate with Federal , state and local governments.

(b) To retain legal counsel, the choice of a fee-charging attorney being subject to approval of the Secretary of the Interior or his authorized representative.

(c) To veto any proposed sale, disposition, lease or encumbrance of tribal lands, interest in lands, or other tribal assets of the band.

(d) To advise the Secretary of the Interior with regard to all appropriation estimates for federal projects for the benefit of the Elem Indian Colony of Pomo Indians prior to the submission of such estimates to the Bureau of the Budget and to Congress.

(e) To manage, lease, contract, or otherwise deal with tribally owned assets.

(f) To establish fees, receive funds, and expend any such funds which may come into the exclusive control of the Elem Indian Colony of Pomo Indians for the payment of its expenses or to finance any project which is for the benefit of the band as a whole.

(g) To promulgate and enforce ordinances, consistent with this constitution and bylaws and federal law, governing initial and future enrollment for membership, loss of membership, adoption of members; the use of tribal land and assets; the conduct of elections; the manner of making, holding and revoking assignments of tribal land or interests therein; the licensing of non-members coming on the rancheria for purposes of hunting, fishing, trading or other business; and all other necessary ordinances.

(h) To establish its own rules of procedure for the conduct of its affairs, and to delegate to the executive commi-tee, or other representatives, any of the foregoing powers.

(i) To take such actions as are necessary to carry into effect any of the foregoing powers.

(j) To establish such housing and other authorities as are necessary to promote the welfare of the band.

Section 2. The executive committee shall have the following powers, but shall not commit the Elem Indian Colony to any contract, lease, or other transaction unless it is so authorized in advance by a duly enacted ordinance or resolution of the general council.

(a) Carry out all ordinances, resolutions, or other enactments of the general council

(b) Represent the Elem Indian Colony in all negotiations with federal, state and local governments, their agencies and officers, and advise the general council of the results of all such negotiations.

Section 3. Any rights or powers heretofore vested in the Elem Indian Colony of Pomo Indians, but not expressly referred to in this constitution, shall not be abridged by this article.

ARTICLE VIII - BILL OF RIGHTS

The protections guaranteed to persons by Title II of the Civil Rights Act of 1968 (82 Stat. 77), against actions of a tribe in exercising its powers of self-government, shall apply to the Elem Indian Colony of Pomo Indians.

ARTICLE IX - AMENDMENTS

Section 1. This constitution and bylaws may be amended by a majority vote of the qualified voters who are eighteen (18) years of age or over at an election authorized for that purpose by the Secretary of the Interior, provided at least thirty percent (30%) of those entitled to vote shall vote in such election, but no amendment shall become effective until it shall have been approved by the Secretary of the Interior.

Section 2. Amendments may be proposed by the executive committee or by a petition signed by at least thirty percent (30%) of the qualified voters of the Elem Indian Colony of Pomo Indians. An amendment will be submitted to the Secretary of the Interior, who shall thereupon call an election upon the proposed language, only after the amendment has been discussed and approved at a meeting of the general council.

BYLAWS FOR THE ELEM INDIAN COLONY OF POMO INDIANS
CLEARLAKE OAKS, CALIFORNIA

ARTICLE I - DUTIES OF THE CHAIRMAN

It shall be the duty of the chairman to preside at all meetings of the general council and the executive committee; to execute on behalf of the Elem Indian Colony all contracts, leases, or other documents when authorized to do so by the general council, and to certify the enactment of all written resolutions and ordinances. He shall have the general supervision of all other officers, committees, and employees, and shall see that their duties are properly performed. When neither the general council nor the executive committee are in session, he shall be the official representative of the Elem Indian Colony. The chairman may vote in elections for officers and elections called by the Secretary of the Interior, but he shall not vote when presiding at meetings, except to break a tie vote.

ARTICLE II - DUTIES OF THE VICE-CHAIRMAN

It shall be the duty of the vice-chairman to assist the chairman in the performance of his duties and in the absence of the chairman to perform the duties of the chairman.

ARTICLE III - DUTIES OF THE SECRETARY-TREASURER

It shall be the duty of the secretary-treasurer to keep the minutes of the general council meetings and a record of the executive committee meetings; to attest to the enactment of all written resolutions and ordinances; to send out all required notices; and to receive on behalf of the executive committee all petitions. The secretary-treasurer shall have the care and custody of all the funds, liquid assets or other valuables of the Elem Indian Colony; shall deposit all funds in a depository which has been approved by the general council; shall disburse funds only as authorized by resolution of the general council by checks which are co-signed by the chairman; and shall maintain financial accounts, receipts and records. The financial records of the Elem Indian Colony shall be subject to inspection or audit at the direction of the general council or the Bureau of Indian Affairs. The secretary-treasurer shall report all receipts and disbursements at each regular meeting of the general council. Whenever the general council deems it necessary, the secretary-treasurer shall be bonded to the Elem Indian Colony, with bond premiums payable from the tribal funds. The secretary-treasurer will send copies of all minutes of meetings, ordinances and written resolutions to the Superintendent, Central California Agency, Bureau of Indian Affairs, after approval by the general council.

ARTICLE IV - EFFECTIVE DATE

This constitution and bylaws, when adopted by a majority vote of the qualified voters, voting at an election authorized for that purpose by the Secretary of the Interior, provided that at least thirty percent (30%) of those entitled to vote shall vote in such election, shall be submitted to the Secretary of the Interior for approval, and, if approved, shall be effective from the date of such approval.

AMENDMENT
CONSTITUTION AND BYLAWS
OF THE
ELEM INDIAN COLONY OF POMO INDIANS
CLEARLAKE OAKS, CALIFORNIA

AMENDMENT I

Line 2, Section 2, Article IV - MEETINGS - shall be amended to read as follows:

> Forty-five percent (45%) of the qualified voters of the band constitutes a quorum at meetings of the general council.

Exhibit

C

ELEM INDIAN COLONY
ELEM POMO TRIBE
P. O. Box 989 • Clearlake Oaks, CA 95423
707-998-2992 • Fax 707-998-2993 • www.elemnation.com

January 18, 2007

Delbert Thomas Jr.
P.O. Box 1465
Clearlake Oaks, CA 95423

As you may know, under the Elem Indian Colony Constitution & By-laws for membership Section 2, indicates one of the criteria's for membership, is you must be a descendant of a person on the basic membership roll. Unfortunately, we have received historical documents that your descendents are from Lower Lake, which is now called the Koi Nation and therefore you do not meet the requirements for membership of the Elem Indian Colony. If we had known this information before hand, it would have dealt with this issue sooner.

We will continue providing you with tribal administrative services, such as Employment Assistance, Re-location Assistance, Adult Education and ICWA. In addition, you will **not** receive non-gaming revenue funds for the last quarter ending December 30, 2006. This payment will be given out in early February 2007.

However, until further notice your **voting rights** will be suspended **immediately** and you have the right to appeal this decision in writing and **provide documents proving descendancy** to Elem within ninety (90) days from the date of this letter. You must bring your appeal and appropriate documents before the General Council at the end of the ninety (90) days.

In the event that you do not appeal within the ninety (90) day limit and you hold a Lot Assignment, it will be determined by the Tribe as to the date you must vacate your lot assignment and property from Elem. Again, we will make every effort to assist you with becoming a member of your rightful Tribe. See attached document of your family descendant and location of Tribe. Page 405 Father & Page 442 Mother of Delbert Thomas Sr.

Respectfully,

Raymond Brown Sr.
Tribal Chairman

c: Elem Enrollment Committee

Please see attached document of your family descendants and location Tribe.
Page 405 Father & Page 442 Mother of Delbert Thomas Sr.

Sincerely,

Raymond Brown Sr., Tribal Chairman

Sarah Garcia, Executive Committee Secretary/Treasurer

Karen John, Enrollment Committee Chairman

C: BIA, KOI Nation

Thomas Descendants

Census Roll

LAST FIRST MIDDLE	ROLL NO.	DATE OF BIRTH	ADDRESS
Thomas, Gilbert (Tum-mo-nayh)	19397	1893	Yuma, Gen.Del.,Ariz.
Thomas, Pasqualita (Havchats)	19398	1899	"
Thomas, Edith	19399	1914	"
Thomas, Susie	19400	1913	"
Thomas, William	19401	1920	"
Thomas, Harry	19402	1923	"
Thomas, Lizzie	19403	1924	
Thomas, Hector	19404	6-1-1884	Susanville, Cal.
Thomas, Henry - see roll #18263			
Thomas, Alexander 18264	19405	10-28-1879	Schilling, Calif.
Thomas, Henry	19406	10-28-1858	"
Thomas, Ellen	19407	8-10-1872	Happy Camp, Calif.
Thomas, Henry	19408	1-26-1872	"
Thomas, Elizabeth	19409	3-19-1895	"
Thomas, Chauncey	19410	9-17-1902	"
Thomas, Jerry	19411	9-19-1904	"
Thomas, Arnold	19412	5-19-1907	"
Thomas, Henry	19413	11-18-1915	"
Thomas, Sanford	19414	1892	Yuma, Ind.Agcy.,Ariz.
Thomas, Homer (Atsa-yer-yem)	19415	1889	"
Thomas, Havchats	19416	1924	"
Thomas, Russell	19417	1926	"
Thomas, Murphy			
Thomas, Jennie Young - see roll #5001			
Thomas, Ruth - see roll #5002			
Thomas, Robert - see roll#5003			
Thomas, Laura - see roll #2211			
Thomas, Little	19418	1884	Lower Lake, Calif.
Thomas, Thora Leach	19419	1-17-1891	"
Thomas, Effie	19420	2-19-1908	"
Thomas, Albert	19421	7-5-1911	"
Thomas, Cecil	19422	12-19-1914	"
Thomas, Manuel (A-pook-a-ma-hun)	19423	1842	Yuma Agcy., Ariz.
Thomas, Marsyllo	19424	7-12-1862	Macdoel, Calif.
Thomas, McRay	19425	4-28-1909	Lemoore, Gen.Del.,Ca
Thomas, Natividad	19426	- -	"
Thomas, Sam	19427	3-17-1905	"
Thomas, William	19428	- -	"
Thomas, John	19429	- -	"
Thomas, Bernard	19430	- -	"
Thomas, Nellie - see roll #10175			
Thomas, Pete	19431	9-6-1874	Lone Pine, Box 432, Calif. "
Thomas, Ella Bell(See-i-va-u-nee)	19432	9-6-1866	Fort Jones, Calif.
Thomas, Peter	19433	10-11-1885	"
Thomas, Mae	19434	6-21-1895	"
Thomas, Zelda Mae	19435	7-21-1918	"
Thomas, Vina Rosella	19436	2-29-1919	"
Thomas, Lucille	19437	9-19-1921	"
Thomas, Emma Novell	19438	9-17-1923	Anderson, Calif
Thomas, Plena	19439	9-29-1915	"
Thomas, Genevieve	19440	10-29-1923	Rohnerville
Thomas, Vernon L.	19441	10-1-1909	Happy Camp
Thomas, William	19442	8-10-1869	

MAY) DESCENDANTS

Census Roll

LAST	FIRST	MIDDLE	ROLL NO.	DATE OF BIRTH	ADDRESS
Williams,	Archie		see roll - #19291		
Williams,	Clarence		see roll - #19292		
Williams,	Benedita		21165	2-13-1884	Box 15, King City, Calif.
			21166	2-13-1895	"
Carabajal,	Charlie		21167	4-8-1921	"
Carabajal,	Frances		21168	3-10-1902	"
Carabajal,	Victor		21169	9-18-1900	
Carabajal,	Thomas		21170	12-26-1901	Box 71, Blue Lake, Calif.
Williams,	Ben	Randolph			"
			21171	5-16-1928	
Williams,	Vivian	Mae	21172	1895	Susanville, Calif.
Williams,	Bert		21173	1878	"
Williams,	Alice	Pete	21174	1898	"
Williams,	Marie	Jack	21175	5-15-1885	
Williams,	Bert	(Bee-tus) (Ridlon)	21176	3-3-1902	Friant, Calif.
Williams,	Bill		21177	1-2-1905	"
Williams,	Martina		21178	5-31-1894	Rt.2, Box 49, Bishop, Calif.
Williams,	Billy				"
			21179	8-21-1895	"
Williams,	Emma		21180	4-17-1913	"
Williams,	Blanche		21181	4-25-1915	"
Williams,	Florence		21182	4-26-1917	"
Williams,	Hazel		21183	12-22-1919	"
Williams,	John		21184	7-4-1922	"
King,	Katherine		21185	9-21-1923	"
Williams,	Clarence		21186	1-21-1926	"
Williams,	Harold		21187	2-21-1928	"
Williams,	Billy,	Jr.	21188	8-20-1880	Benton, Calif.
Williams,	Billy		21189	8-20-1885	"
Williams,	Nannie		21190	6-5-1920	
Williams,	Julia		see roll - #20353		
Williams,	Blanche		see roll - #20354		
Williams,	Thomas		see roll - #12583		
Williams,	Card (Cad)		21191	10-12-1916	Lower Lake, Calif.
Williams,	Caroline		21192	9-3-1892	Laws, Calif.
Williams,	Casuse		21193	8-31-1893	"
Williams,	Daisy		21194	1889	Upper Lake, Calif.
Williams,	Charles		21195	1882	"
Williams,	Nannie	Boone	21196	8-5-1917	"
Williams,	Rosie		21197	6-15-1862	Box 702, Klamath, Calif.
Williams,	Charles				"
			21198	7-15-1862	
Williams,	Annie	(Ning-na-ma)	21199	3-3-1880	Coarsegold, Calif.
Williams,	Charlie		21200	6-12-1880	"
Williams,	Nellie		21201	9-3-1917	"
Williams,	Eben		21202	6-18-1919	"
Williams,	Flora		21203	4-10-1925	"
Williams,	Loren		21204	11-17-1927	
Williams,	Violet		21205	3-16-1872	Berry Creek, Calif.
Williams,	Dan		21206	6-14-1902	"
Williams,	Ned		21207	12-22-1862	Box 300, RFD 3, Porterville, Cali
Williams,	Dan				"
			21208	5-9-1910	
Williams,	Daniel,	Jr.	21209	5-15-1875	Janesville. Cali
Williams,	Dan F.	(Co-na-hom)			

IN REPLY REFER TO:
Tribal Operations
063 Elem

UNITED STATES
DEPARTMENT OF THE INTERIOR

BUREAU OF INDIAN AFFAIRS
Central California Agency
1800 Tribute Road
Post Office Box 15740
Sacramento, California 95813

November 19, 1975

FILE COPY

To: Indians of the Elem Indian Colony

Subject: Petition Revoking Membership of Four Individuals

The petition signed by sixteen (16) individuals of the Elem Indian Colony has been sent to the Office of the Solicitor for review and to determine the legality of the action.

His decision is given below:

> "The petition cites two separate sections, Section 4 of Article II and Section 1, paragraph (g) of Article VII of the Constitution for the Elem Indian Colony, as authority for the removal of four of their members from the membership roll.
>
> Article II, Section 4 gives the Tribal Council the power to prescribe rules to the Secretary of the Interior which will be covering the future membership or loss of membership of their tribal members. This section does not give the Tribal Council the right to remove any member from the membership roll. As the council has not prescribed rules for the removal of a member and no rules have been adopted or approved by the Secretary of the Interior, this section cannot be used to remove the members by way of petition.
>
> With regard to Article VII, Section 1, paragraph (g), the General Council has the right to issue ordinances concerning loss of membership so long as those ordinances are consistent with the constitution and bylaws. Article II of the Constitution sets forth the criterion for membership in the Colony. If the four parties who are mentioned in the petition fulfill the membership requirments of Article II, it would be inconsistent to remove those people from the membership pursuant to Article VII, Section 1 (g).

We would point out that in the petition and your correspondence there is no indication whether the action taken by those signing the petition was taken by the General Council pursuant to Article IV of the Constitution and Bylaws at a regularly called meeting of the council. You have given us no transcript of minutes of the meeting or resolutions concerning the passage of the petition. Removal of membership without proper notice to the members to be removed and without opportunity to be heard would be in violation of the Indian Bill of Rights and the Elem Indian Colony's own constitution and bylaws.

Therefore the petition is not valid and the membership rights of the four (4) listed are not revoked.

Sincerely yours,

Frank L. Haggerty, Jr.

Frank L. Haggerty, Jr.
Tribal Operations Officer

Noted:

Superintendent

APPROVED

FILE COPY

IN REPLY REFER TO
Tribal Operations
063 Elem

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
Central California Agency
1800 Tribute Road
Post Office Box 15740
Sacramento, California 95852-0740

JUL 8 1982

Mr. Herbert Geary
P. O. Box 347
Clearlake Oaks, California 95423

Dear Mr. Geary:

We are in receipt of your letter dated June 30, 1982, in which you request copies of the General Council minutes regarding the action to revoke or terminate the status of your daughters, Brenda and Pamela Geary, as members of the Elem General Council.

Our records have been researched and we find that we do not have any minutes on file regarding the action taken. In contacting the Colony we were informed that a meeting was held on June 12, 1982. We suggest you contact the tribal office and request the minutes of the June 12th meeting.

When reviewing our records we find that your membership status, particularly whether your name is listed on the basic membership roll, has been previously questioned. To clarify, our records reveal that you were adopted as a member at a General Council meeting held on June 7, 1970, by a vote of 9 for and 2 against. Your name was not included on the basic membership roll which was adopted at the same meeting and which consisted of thirteen individuals. However, on January 29, 1972, an Enrollment Ordinance was enacted establishing membership requirements and procedures to prepare and maintain a current membership roll. Section 1 of said ordinance provides:

Section 1 - The membership of the El-Em Band of Pomo Indians shall consist of:

(a) Those persons listed on the attached basic membership roll which shall include previously adopted members.

(b) Descendants of persons on the basic membership roll, provided such descendants possess at least 1/8 degree Indian blood.

(c) Persons who otherwise meet the requirements for membership shall be ineligible for membership if they:

(1) appear on a membership roll of another tribe or band;

(2) have received an allotment or formal assignment of land with another tribe or band;

(3) appear on a distribution plan of another tribe or band prepared pursuant to the Amended Rancheria Act;

(4) have relinquished in writing their membership in the El-Em Band of Pomo Indians.

The same roll referred to in Section 1(a) was later identified as the basic membership roll under Article II, Membership, of the Constitution and Bylaws as the basis for future membership.

Regardless of the facts on how you obtained membership your name is included on the list of fourteen individuals identified as the basic membership in the ordinance and constitution and there should be no question now or in the future regarding your basic roll membership status. The same holds true for your daughters who meet the regular requirements for enrollment under Article II, Section 2 of the Constitution and Bylaws.

We had earlier advised the Colony that children of adopted members would have to obtain membership through the adoption process. Normally, this is the case if they do not meet the regular requirements for enrollment. However, since your daughters meet the criteria established in the ordinance and the constitution based on your name appearing on the basic membership roll, there is no need for them to be enrolled through the adoption process. Regarding restrictions imposed upon adopted members, generally adopted members are accorded the same rights as other members unless specifically stated in tribal documents. Our research did not indicate that any restrictions were placed on your membership when adopted. The Colony may desire to place restrictions on future adoptees when exercising its authority to enact adoption provisions under Article II, Section 4 of the constitution.

For information purposes we are forwarding a copy of this letter to the Colony. Should you have any further questions regarding this matter, feel free to contact the Tribal Operations Office at (916) 484-4659.

Sincerely yours,

Harold M. Bergford

ACTING Superintendent

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : El-Em Colony (Sulphur Bank Rancheria)
Official Record

DATE: August 3, 1970

FROM : Community Services Officer
Sacramento Area Office

SUBJECT: General Council Meeting -- July 26, 1970

1. Chairman, Irvin Morinda, called the meeting to order at 10:30 a.m. Twelve voting members were present as follows:

Priscilla Brown Smith
Tom Morinda
Irvin Morinda
Delbert Thomas
Albert Thomas
John Kelsey
Calvin Brown
Dewey Barnes
Herbert Geary
Thomas B. Morinda
Jim Brown, Jr.
Effie Kelsey

2. Congressman Robert L. Leggett was represented by his brother, Neal.

3. Bureau of Indian Affairs was represented by Wesley Barker, Paul Brill, and Arthur LeMieux.

4. (a) After discussion of alternate land use and road arrangement plans, the Council voted to approve modifications in road alignment recommended by Indian Health Service.

(b) The Council discussed and approved the principle of retaining all beach front below the 1,330 elevation (high water mark) in tribal ownership so that all residents would have access to the water. The Council excepted Assignments #4 (Raymond Brown) and #9 (John Kelsey) from this requirement, and instructed the Bureau of Indian Affairs to draw a line parallel and closer to the waters edge in these cases.

Vote on above two items was 11 For; 0 Opposed.

5. Twelve members of the General Council signed the attached letter of intent as requested by Indian Health Service concerning the water and sewer systems.

5010-108

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

6. Mr. Barker asked if the Council had made a decision on the disposition of Assignment #1. Mr. Morinda replied that since neither Dewey Barnes or Jim Brown, Jr. had relinquished their claim, the Council would take no action until the principals resolved the matter between themselves. Mr. Barker stated the Bureau of Indian Affairs position that no house could be built for either party except on an assignment approved by the Council, and agreed with the Council's request to send letters to Mr. Brown and Mr. Barnes.

7. The Council selected the name El-Em Drive for the main access road, and will select additional names for the other roads at a later date.

8. The Chairman thanked Mr. Leggett for his interest and support, and adjourned the meeting at 1:00 p.m.

Wesley L. Barker

Attachment
Letter of Intent, dtd July 26, 1970

cc: Mr. Irvin Morinda
Chairman, Sulphur Bank Rancheria

ATTACHMENT H

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Central California Agency
650 Capitol Mall, Suite 8-500
Sacramento, CA 95814-4710

IN REPLY REFER TO

AUG 8 2007

Mr. Gary Thomas
Post Office Box 1352
Nice, California 95464

Dear Mr. Thomas:

The purpose of this letter is to acknowledge receipt of and to provide a response to your correspondence dated May 4, 2007, notifying the Bureau of Indian Affairs of recent events involving illegal actions of the enrollment committee and the violation of the Tribe's Constitution relative to tribal membership criteria. You are requesting the Bureau of Indian Affairs to hold a meeting between the Executive Committee and the alleged disenrolled members to help facilitate this issue and ensure that the Tribe understands that it must follow its Constitution and Bylaws.

The Bureau's records show that the Tribe's constitution, as amended, and the enrollment ordinance enacted by the General Council on January 29, 1972, approved by the Acting Area Director, Bureau of Indian Affairs on February 7, 1972, governs the Tribe's enrollment of members. In deference to tribal sovereignty and consistent with the federal government's current policy of tribal self-determination, the Bureau must insist that persons aggrieved by tribal government action pursue and exhaust existing appeal processes internal to the Tribe. The Enrollment Ordinance sets forth the membership requirements and the procedures for persons to apply for membership, identifies who has the authority to make decisions on the approval or disapproval of persons applying for membership, and provides the procedures in which to file an appeal. Where there is internal controversy involving the interpretation of tribal law, the proper tribal forum to make decisions in these matters is the governing body.

Although we are concerned about the recent actions taken by the Executive Committee for the Elem Indian Colony, we are not in a position to intervene in internal tribal affairs due to the United States Supreme Court decisions. Most notable is the United States Supreme Court Decision in *Santa Clara Pueblo v. Martinez*, 436 U.S. 49. 72 n 32 (978), which determined that tribes have a right to determine their own membership in exercising the rights of sovereignty and self-determination. In following the Court's decisions, the Bureau of Indian Affairs has established policy of non-involvement in internal tribal issues. See *Wheeler v. United States Dept. of the Interior*, 811 F. 2nd 549 (10th Cir. 1987).

In conclusion, the Bureau recommends that the tribal members work with the General Council and its elected officials to resolve these membership issues. We are forwarding a copy of this letter to the Executive Committee of the Elem Indian Colony to share with the members of the General Council.

Please contact Carol Rogers-Davis, Acting Tribal Operations Officer, at (916) 930-3764 should you have any further questions with regard to this matter.

Sincerely,

Troy Burdick
Superintendent

Enclosures

cc: Executive Committee, Elem Indian Colony

ATTACHMENT I

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Central California Agency
650 Capitol Mall, Suite 8-500
Sacramento, CA 95814-4710

IN REPLY REFER TO

AUG 8 2007

Mr. Richard J. Steward
5665 Main Street, #5
Kelseyville, California 95451

Dear Mr. Steward:

The purpose of this letter is to acknowledge receipt of and to provide a response to your correspondence dated May 31, 2007, with regard to the Elem Indian Colony.

On June 13, 2007, I had met with you to listen to your concerns regarding the actions of the Executive Committee taken on January 9, 2007. Your concerns are that the Executive Committee is acting outside its authority to revoke the membership rights of twenty-five (25) tribal members of the Elem Indian Colony. You assert that it is the General Council's authority to approve or disapprove persons applying for membership with the Elem Indian Colony. You are seeking in writing the Bureau of Indian Affairs official opinion on the legality of actions taken by the Elem Executive Committee with regard to the disenrollment of Elem tribal members pursuant to the Tribe's Constitution and Bylaws.

The Bureau's records show that the Tribe's constitution, as amended, and the enrollment ordinance enacted by the General Council on January 29, 1972, approved by the Acting Area Director, Bureau of Indian Affairs on February 7, 1972, governs the Tribe's enrollment of members. In deference to tribal sovereignty and consistent with the federal government's current policy of tribal self-determination, the Bureau must insist that persons aggrieved by tribal government action pursue and exhaust existing appeal processes internal to the Tribe. The ordinance governing the enrollment of members sets forth the membership requirements and the procedures for persons to apply for membership, identifies who has the authority to make decisions on the approval or disapproval of persons applying for membership, and provides the procedures for persons to file an appeal if their application for membership is disapproved. Where there is internal controversy involving the interpretation of tribal law, the proper tribal forum to make decisions in these matters is the governing body.

Although we are concerned about the recent actions taken by the Executive Committee for the Elem Indian Colony, we are not in a position to intervene in internal tribal affairs due to the United States Supreme Court decisions. Most notable is the United States Supreme Court Decision in *Santa Clara Pueblo v. Martinez*, 436 U.S. 49. 72 n 32 (978), which determined that tribes have a right to determine their own membership in exercising the rights of sovereignty and self-determination. In following the Court's decisions, the Bureau of Indian Affairs has established policy of non-involvement in internal tribal issues. See *Wheeler v. United States Dept. of the Interior*, 811 F. 2nd 549 (10th Cir. 1987).

In conclusion, the Bureau recommends that the members work with the General Council and its elected officials to resolve these membership issues. We are returning your documents as requested. We are forwarding a copy of this letter to the Executive Committee of the Elem Indian Colony to share with the members of the General Council.

Please contact Carol Rogers-Davis, Acting Tribal Operations Officer, at (916) 930-3764 should you have any further questions with regard to this matter.

Sincerely,

Troy Burdick
Superintendent

cc: Executive Committee, Elem Indian Colony

ATTACHMENT J

United States Department of the Interior

IN REPLY REFER TO:

BUREAU OF INDIAN AFFAIRS
Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825

MAY 2 3 2011

CERTIFIED MAIL NO. 7010 1670 0001 7402 6468
RETURN RECEIPT REQUESTED

Barbara Karshmer, Attorney at Law
765 Market Street, Suite 28F
San Francisco, California 94103

Dear Ms. Karshmer:

This purpose of this correspondence is to inform you of my decision regarding your Notice of Appeal (Appeal) dated November 19, 2010, which you filed on behalf of your clients, the Tribal Council of the Elem Indian Colony formerly recognized by the Bureau of Indian Affairs[1]. Separate appeals were also filed by individual tribal members pertaining to the purported recall elections, as more fully set out in the Background section below, and this decision resolves these separate appeals as well. The November 19th Appeal challenges a decision by the Bureau of Indian Affairs, Superintendent, Central California Agency (Superintendent) dated November 12, 2010, wherein the Superintendent recognized the results of the Elem Indian Colony (Tribe), General Council's tribal election conducted on November 6, 2010. The Superintendent determined that the decision was necessary to continue government-to-government relations in order to comply with 25 Code of Federal Regulations (CFR) §§ 900.8, 900.12,[2] and to process a tribal attorney contact as required by tribal law[3]. For the reason set forth below, the Superintendent's decision of November 12, 2010, is affirmed.

The matter regarding the disenrollment of the Tribal members who were alleged to be listed on the membership roll of the Displaced Elem Lineage Emancipated Members Alliance Tribe (DELEMA)[4] is remanded back to the Tribe's governing body for their appropriate action, if they

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[1] The former Tribal Council was not identified; therefore we will assume that Tribal Council referred to is the Executive Committee elected in November 2008 as follows: Geraldine Johnson, Chairperson; Batsulwin Brown, Vice-Chairman; Sara Garcia, Secretary/Treasurer; and Members-at-Large, Karen John and David A. Brown.

[2] The Tribe receives funding through a contract issued by the Agency under Public Law No. 93- 638, the Indian Self-Determination Act, 25 U.S.C. § 450-450n.

[3] **Article VII, Powers of the Governing Body, Section 1 (b):** "To retain legal council, the choice of a fee-charging attorney being subject to approval of the Secretary of the Interior or his authorized representative".

[4] **DOI, BIA-Federal Register Notice dated January 12, 1999, Receipt of Petitions for Federal Acknowledgement of Existence as an Indian Tribe**, list, among others, The Displaced Elem Lineage Emancipated Members Alliance Tribe (DELEMA) c/o Richard J. Steward, 3557 Hoen Avenue, Santa Rosa, California 95405, May 11, 1998.

determine necessary. It is my belief that this tribal membership issue must appropriately be addressed in a Tribal forum, and it is crucial that the issue regarding membership status of the DELEMA group be resolved as soon as possible.

Relevant Federal Law:

1. The Department of the Interior (Department) has both the authority and the responsibility to interpret tribal law when necessary to carry out the government-to-government relationship with the Tribe. *Greendeer* v. *Minn. Area Director*, 22 IBIA 91, 95 (1992), citing *Reese* v. *Minneapolis Area Director*, 17 IBIA 169, 173 (1989).

2. "BIA has the authority and the responsibility to decline to recognize the results of tribal actions when those results are tainted by a violation of ICRA." *Greendeer* v. *Minn. Area Director*, 22 IBIA 91, 97 (1992).

3. "The Secretary of the Interior is charged not only with the duty to protect the rights of the tribe, but also the rights of individual members. And the duty to protect these rights is the same whether the infringement is by non-members or by members of the tribe." *Milam* v. *Dept. of the Interior*, No. 82-3099; 10 ILR 3013, 3017 (D.D.C. 1982); quoted at *Seminole Nation* v. *Norton*, 223 F. Supp. 2d 122, 137 (D.D.C. 2002).

4. The Federal Government has a duty to recognize, if at all possible, a tribal government with which it can carry on government-to-government relations. *Goodface* v. *Grassrope*, 708 F.2d 335 (8th Cir. 1983).

5. The Secretary of the Interior has a duty to ensure that trust resources belonging to a tribe, or Federal resources allocated to a tribe, are transmitted to an entity that legitimately represents the tribe. *Seminole Nation* v. *United States*, 316 U.S. 286 (1942); *Milam* v. *US*, supra.

Relevant Tribal Law:

Article II- Membership, The membership of the Elem Indian Colony of Pomo Indians shall consist of:

> Section 1. Persons listed on the basic membership roll established pursuant to the enrollment ordinance adopted by the general council on January 29, 1972.
>
> Section 2. Descendants of persons on the basic membership roll, provided such descendants possess at least 1/8 degree Indian blood, and have at least one parent who is an enrolled member of the colony.
>
> Section 3: Persons who otherwise meet the requirements for membership as established by the above mentioned enrollment ordinance shall be ineligible for membership if they:
>
> (a) are enrolled as members of another tribe or Band;

(d) have relinquished, in writing, their membership in the Elem Indian Colony of Pomo Indians.

Article II, Membership, Section 4, "The Council shall have the power to prescribe rules and regulations, subject to the approval of the Secretary of the Interior, covering future membership including adoption and loss of membership".

Article III, Governing Body Section: "The governing body of the Elem Indian Colony of Pomo Indians shall be the general council, which shall be composed of all qualified voters of the band".

Article III, Governing Body Section, Section 3: "The general council shall elect from its members by secret ballot an executive committee consisting of a chairperson, vice-chairman, secretary-treasurer, and two committee members who shall hold office for two years or until their successors are duly elected ... etc".

Article IV, Meetings, Section 2: "The executive committee shall call special meetings promptly upon receipt of a petition signed by at least thirty-percent (30%) of the qualified voters requesting such meetings. Forty-five percent (45%) of the qualified voters of the band constitutes a quorum at a meeting of the general council. Notice of all general council meetings shall be given in writing at least fifteen (15) days in advance of the meeting.

Article V, Elections, Section 2, Regular Elections: [in part] "... the election of officers shall be conducted during November of each even numbered year ... etc."

Article V, Elections, Section 3: [in part] "Nominations of candidates shall occur at the November meeting of the general council as provided in Section 2, Article V. Nominations shall be from the floor".

Article VI, Vacancies, Removal and Recalls, Section 2, Recall: "Upon receipt by the executive committee of a valid petition, signed by at least thirty percent (30%) of the qualified voters calling for the recall of an elected officer, the executive committee shall call and conduct within thirty (30) days a recall election. A majority of those who participate in such election must favor recall in order for it to become effective, provided those who vote constitute at least fifty-one percent (51%) of the qualified voters".

Article VII, Powers of the Governing Body, Section 1, "The general council of the Elem Indian Colony of Pomo shall exercise the following powers, subject to any limitations imposed by the statutes and Constitution of the United States: [in part]

(b): To retain legal council, the choice of a fee-charging attorney being subject to approval of the Secretary of the Interior or his authorized representative.

g) To promulgate and enforce ordinances, consistent with this constitution and bylaws and federal law, governing initial and future enrollment for membership, loss of membership, adoption of members ... etc.

(h) To establish its own rules of procedure for the conduct of its affairs, and to delegate to the executive committee, or other representatives, any of the foregoing powers.

(i) To take such actions as are necessary to carry into effect any of the foregoing powers".

Article VIII, Bill of Rights: "The protections guaranteed to persons by Title II of the Civil Rights Act of 1968 (82 Stat. 77)[5], against actions of a tribe in exercising its powers of self-government, shall apply to the Elem Indian Colony".

Bylaws, Article I, Duties of the Chairman: "It shall be the duty of the chairman to preside at all meetings of the general council and the executive committee ... etc".

Bylaws, Article II, Duties of the Vice-Chairman: "It shall be the duty of the vice-chairman to assist the chairman in the performance of his duties and in the absence of the chairman to perform the duties of the chairman".

BACKGROUND

The Tribe adopted its Constitution and Bylaws on February 10, 1973, and it was approved by the Bureau of Indian Affairs, Deputy Assistant Secretary of the Interior on April 2, 1973. The Constitution vests the government powers in a General Council, which consists of all qualified voters of the Tribe, in accordance with Article III-Governing Body, Sections 1 and 2[6]. The majority of the Tribe's affairs are managed by the General Council, in accordance with Article VII-Powers of the Governing Body, Sections (a) through (j). The General Council elects from its membership a five-person Executive Committee, who are delegated certain powers from the Council in accordance with Article VII, Section 2. The Executive Committee includes a Chairman, Vice-Chairman, Secretary/Treasurer, and two (2) Members-at-Large. Regularly-scheduled elections for tribal officers are held at the General Council meeting in November in accordance with Article V, Elections, Section 3.

Allegations concerning disregard for tribal laws, violations of Tribal member's rights, and mismanagement of tribal programs and funds, were cited as support for the General Council's purported recall of Chairperson Geraldine Johnson on November 14, 2009, and Vice-Chairperson Batsulwin Brown, and Member-at-Large David Brown on February 6, 2010. The Executive Committee split into two factions and both factions claim to be the rightful leadership of the Tribe. Each faction conducted separate Executive Committee and General Council meetings in order to conduct Tribal business. Because of the Executive Committee split, the authority to bring these appeals in the name of the Tribe is disputed and therefore, we will refer to Appellants Geraldine Johnson (Chairperson), Batsulwin Brown (Vice-Chairperson) and David Brown (Member-at-Large), as the "Johnson Committee", while Sara Garcia (Secretary/Treasurer) and Karen Smith and Leora John (Members-at-Large), and other

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[5] **The Indian Civil Rights Act** (25 U.S.C. 25 §§ 1302-3)

[6] **Article III-Governing Body, Section 1**, "The governing body of the Elem Indian Colony of Pomo Indians shall be the general council ... etc." **Section 2**, "All members of the Elem Indian Colony who are 18 years of age or older are qualified voters."

Discussion and Conclusion

In the matter regarding the DELEMA membership issue, it has long been held by the courts that an Indian tribe has the right to self-government, *Wheeler* v. *United States Dept. of the Interior*, 811 F. 2d 549 (1oth Cir. 1987), and the right to determine its own membership. See, *Santa Clara Pueblo* v. *Martinez*, 436 U.S. 49 (1978). Enrollment and/or disenrollment as a member of a federally recognized Indian tribe are matters between the individual and the tribe. The burden of establishing eligibility for membership is on the individual. An individual must meet the membership requirements outlined in the tribe's governing document. Historically, tribal membership has been considered by the Department of the Interior and Federal courts to be a matter within the authority of the tribes themselves. On several occasions, the Supreme Court has recognized the importance of the right of Indian tribes to define their own membership for tribal purposes, free from interference by the Federal government. As a result, the Department, Federal courts and the Bureau of Indian Affairs, traditionally refrain from intruding into internal tribal membership decisions. Because of the foregoing laws and BIA policy, the BIA lacks authority to be involved in the Tribe's disenrollment matters unless authority is conferred by the Tribe itself, and to initiate such action without authority would be in violation of the Tribe's rights to self-government.

Therefore, the issue regarding the membership status of Tribal members purported to also be members of DELEMA is a matter for the Tribe to resolve, consistent with established Federal laws and Tribal law as explicitly expressed in the Tribe's Constitution and By Laws. The Johnson Committee argues that the Tribal members who were purportedly disenrolled were no longer members of the Tribe because they had surrendered their membership, and therefore should not be counted in determining whether quorum requirements of the Tribe's Constitution were satisfied when a meeting was convened for the purpose of disenrolling them. In order to avoid such a conundrum necessitating the disregard of circular logic, the Tribe's Constitution provides at Article II, Section4, that: "The council shall have power to prescribe rules and regulations, subject to the approval of the Secretary of the Interior, covering future membership including adoption and loss of membership." There is no evidence that the Tribal Council took steps to establish an Enrollment Ordinance to specify the exact requirements and means by which individuals in the Tribe could be disenrolled.

Consistent with Article VIII of the Tribe's Constitution, actions concerning this and other issues must conform with the Civil Rights Act of 1968 (82 Stat. 77) and must also conform to provisions of the Indian Civil Rights Act (ICRA), 25 U.S.C. § 1302 (1988), which requires Indian tribes to afford their members due process of law through conformance with their governing documents. In this case, where there is no Enrollment Ordinance or other document specifying how the Tribe may proceed to disenroll individuals, the Tribe's Constitution is the document that governs enrollment actions. The only construction permitted by the Constitution with respect to actions concerning Tribal membership is that a meeting of the Tribe's governing body, the General Council, must be convened in order to resolve to disenroll individuals. Under Article III of the Tribe's Constitution, the General Council is defined to consist of all qualified voters of the Tribe, who are defined as members of the Tribe that are 18 years of age or older. Because the DILEMA members had not been disenrolled from the Tribe, they remained members eligible to vote in accordance with Article III of the Tribe's Constitution. Consistent

with the Tribe's Constitution, the DILEMA members continued to be included as members of the Tribe who were eligible to vote in a General Council meeting and would have to be counted for purposes of determining whether 45% of qualified voters constituted a quorum. As the Superintendent observed, the BIA has the authority and the responsibility to decline to recognize the results of tribal actions when those results are tainted by a violation of the ICRA. *United Keetoowah Band of Cherokee Indians v. Muskogee Area Director*, 22 IBIA 75 (1992); *Greendeer v. Minn. Area Director,* 22 IBIA 91, 97 (1992); *See Displaced Elem Lineage Emancipated Members Alliance v. Sacramento Area Director, Bureau of Indian Affairs*, 34 IBIA 74 (August 10, 1999) (Wherein the IBIA notes that "it is not entirely clear that Appellant's members have actually abandoned their membership in the Colony.").

In the matter regarding the leadership dispute, it is the policy of the Department of the Interior (Department) and the BIA not to become involved in the internal affairs of tribal governments. In this regard, neither the Department nor the BIA has any legal authority to involve itself in the dispute unless a tribe specifically provides the BIA with authority to render decisions concerning tribal governance. However, for the purpose of carrying on its government-to-government relationship with a tribe, the BIA must recognize a tribal governing body even during an election dispute. *See Good face v. Grassrope*, 708 F.2d 335 (8th Cir. 1983). In this case, the Superintendent appropriately determined that he was required to identify who had authority to speak for the Tribe with respect to requests for federal actions such as approval of an attorney contract required to be rendered in accordance with Article VII, Section 1(b) of the Tribe's Constitution. It was therefore necessary for the Superintendent to determine which Committee actions he could recognize in order to identify individuals who could represent the Tribe on a government-to-government basis.

The record supports the Superintendent's June 3, 2010 decision (the Superintendent's 2d Decision) concerning the actions undertaken by the separate Committees. Specifically, the record supports the Superintendent's determination that the Committees' actions were not consistent with Article VI, Section 2, of the Tribe's Constitution, because the Garcia Committee's recall actions required an election specifically for the purpose of recalling Executive Committee members, and the Johnson Committee's meeting was not conducted with a quorum of 45% of the qualified voters of the Tribe. My conclusion that the record supports the Superintendent's June 3, 2010 decision renders the appeal of that decision moot. Accordingly, the July 2, 2010 appeal of the Superintendent's June 3, 2010 decision, which resulted in the Superintendent's October 19, 2010 decision (the Superintendent's 3rd Decision), is rendered moot.

The record supports that the Superintendent's 4th Decision on November 12, 2010, appropriately determined that the Garcia Committee had reasonably interpreted Tribal laws and that the General Council acted within their authority. The record also reflects that proper notice of the November 6th Tribal election was given to both the Johnson Committee and the tribal membership in accordance with Article IV, Meetings, Section 2.[15] The sign-in-sheets and meeting minutes reflect that a quorum was established, the election was conducted in accordance

[15] Sara Garcia's Declaration executed on November 6, 2010, states that on October 21, 2010, she mailed to all Tribal members a copy of the Notice of Regular Election Meeting scheduled for November 6, 2010.

with Article III Governing Body, Section 3[16], and therefore the right to participate and due process was afforded to all members of the Tribe. The sign-in-sheets and meeting minutes of the November 6th Tribal election reflect that members of the Johnson Committee did not participate, although it appears from the record that the Johnson Committee was provided with notice of the meeting consistent with requirements of the Tribe's governing documents and principles of due process. The record reflects that the November 6th election was conducted in accordance with the applicable provisions of the Tribe's Constitution and Bylaws. My conclusion that the record supports the Superintendent's November 12, 2010 decision renders the appeals filed on February 22, 2010 and February 27, 2010, which resulted in the Superintendent's April 27, 2010 decision (the Superintendent's 1st Decision) moot.

Therefore, for the foregoing reasons, I affirm the Superintendent's decision of November 12, 2010, recognizing the results of the November 6th Tribal election for purposes of government-to-government relations. Therefore, the Bureau of Indian Affairs will conduct government-to-government relations with the Executive Committee elected on November 6, 2010, as follows: Nathan Brown, II, Chairman; Richard Steward, Vice-Chairman; Sara Garcia, Secretary/Treasurer; Karen Smith, Member-at Large; and Leora John, Member-at-Large.

This decision may be appealed to the Interior Board of Indian Appeal, 801 North Quincy Street, Arlington, Virginia 22203, in accordance with regulations in 43 CFR§ 4.310 4.340. Your Notice of Appeal to the Interior Board of Indian Appeal (Board) must be signed by you or your attorney and must be mailed within 30 days of the date you receive this decision. It should clearly identify the decision being appealed. If possible, attach a copy of the decision. You must send copies of your Notice of Appeal to (1) The Assistant Secretary-Indian Affairs, 4160 MIB, U.S. Department of the Interior, 1849 C Street, N. W. Washington, D.C. 20240, (2) each interested party known to you, and (3) this office. Your Notice of Appeal sent to the Board must certify that you have sent copies to these parties. If you file a Notice of Appeal, the Board will notify you of further appeal procedures. This decision will not be effective until the Department of the Interior (Department) appeal process is exhausted (25 C.F.R. §2.6). If an appeal is filed, this decision is stayed pending resolution of the appeal by the Department. If no appeal is timely filed, this decision will become final for the Department at the expiration of the appeal period. No extension of time may be granted for filing a Notice of Appeal.

Sincerely,

Regional Director

See attached Distribution List

[16] **Article III Governing Body, Section 3**, which states in part that, "The general council shall elect from its members by secret ballot an executive committee consisting of a chairman, vice chairman, secretary-treasurer, and two committee members ... etc"